

Exhibit 23

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Nicholas N. Paul in Support of
Plaintiffs' Opposition to Defendants' Joint Motion for Partial Summary Judgment

Minneapolis, MN

Page 433

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) Master File No. 01-12257-PBS
PRICE LITIGATION) Subcategory Case No. 06-11337
-----)

THIS DOCUMENT RELATES TO:) Hon. Patti B. Saris
State of California, ex rel.)
Ven-A-Care v. Abbott) Wednesday, September 16, 2009
Laboratories, Inc., et al.)

- - - - - x VOLUME II

Videotaped deposition of STEPHEN W.
SCHONDELMEYER, PHARM.D., Ph.D., held at the Grand
Hotel, 615 2nd Avenue South, Minneapolis,
Minnesota, commenced at 9:22 a.m., the
proceedings being recorded stenographically by
Dawn Workman Bounds, Certified Shorthand Reporter
and Notary Public of the State of Minnesota, and
transcribed under her direction.

Minneapolis, MN

Page 474

1 average acquisition cost of 81.7 percent of the
2 AWP.

3 Do you see that?

4 A. I see that statement, yes.

5 Q. Okay. The average actual drug
6 acquisition cost is considerably less than the
7 department's current ingredient cost allowing AWP
8 minus 5 percent.

9 Do you see that?

10 A. I see that statement, yes.

11 Q. When did they lower it to AWP minus 17;
12 do you know?

13 A. Well, I believe they lowered it to AWP
14 minus 10 in 2002, and then later lowered it to
15 AWP minus 17 in approximately 2004.

16 Q. Why did they take so long; do you know?

17 MR. GLASER: Objection.

18 A. I think you'd have to ask people in the
19 California state government.

20 Q. Fair enough.

21 Take a look at the next bullet -- I'm
22 sorry -- the last bullet.

Minneapolis, MN

Page 613

1 Q. And what's your understanding of why
2 you received this information?

3 A. I think this addresses a point that I
4 have addressed as a theoretical possibility in my
5 report, and this provides concrete data that
6 says, yes, that theoretical possibility does, in
7 fact, exist.

8 This first report -- there were three
9 reports they ran. This first one concerns what's
10 labeled here as the subject drugs. That would be
11 drugs for either Dey, Mylan, or Sandoz that are
12 still included in this particular case. And this
13 is data that I believe they pulled from what they
14 call their formulary file in California that they
15 use to implement the Medi-Cal payment system.

16 And they went back in their formulary
17 file for the subject drugs over time and
18 identified at various points in time was there --
19 were there drugs for which the AWP minus whatever
20 X percent was that was appropriate at the time
21 was actually lower than the federal upper limit
22 amount; meaning that actually when you use that

Minneapolis, MN

Page 614

1 lower-of formula we've talked about several times
2 --

3 Q. Uh-huh.

4 A. -- that lower-of estimated acquisition
5 cost, or lower-of federal upper limit or maximum
6 allowable cost or usual and customary, that -- we
7 don't know the usual and customary here, but with
8 respect to the first two, that actually the AWP
9 minus X percent would come into play, rather than
10 the federal upper limit in these cases and for
11 these particular drugs at these points in time.

12 Q. Okay. So is it your understanding that
13 this is all the examples of when that occurs for
14 the drugs at issue in this case?

15 A. I do not know that, that this is all
16 the examples. I believe these are -- all of
17 these are examples of subject drugs that have
18 that situation.

19 I -- again, I didn't create this and
20 don't know the full scope of what they did behind
21 this to know if they pulled all examples or just
22 an illustrative set of examples.

Minneapolis, MN

Page 659

1 A. I'd have to think about all the
2 relationships. I believe that's possible, but I
3 really haven't thought it through carefully
4 there. I would qualify it.

5 Q. Well, I mean, if you're being
6 reimbursed 5 percent of \$100 and then you're
7 being reimbursed 5 percent of \$150, right,
8 assuming these are relationships that you like in
9 the marketplace, the profit -- the dollar amount
10 above cost is going to go up, right?

11 MR. GLASER: Objection.

12 A. If you're using a percent markup
13 reimbursement.

14 Q. Right. It's just a mathematical
15 certainty, right?

16 A. If you're using a percent.

17 Q. Sure.

18 Well, and that's what Medi-Cal does,
19 AWP minus 5, right?

20 A. It uses minus 5, yes.

21 Q. For most of the time period here?

22 A. Well, no. It uses minus 5, minus 10,

Minneapolis, MN

Page 660

1 and at the end of the period, minus 17.

2 Q. For most of the time period -- in 1994
3 to 2004, most of the time period, it was AWP
4 minus 5, right?

5 A. Yes, and it had other rates at other
6 times.

7 Q. So just because a retailer's profit is
8 going up because of an AWP change doesn't tell
9 you that there's something wrong with that AWP
10 change; is that right?

11 A. I -- I don't recall saying there was
12 something wrong with that scenario.

13 Q. I didn't say you did. I'm just asking
14 you.

15 A. Not necessarily. That's not greatly
16 different than what brand name companies do when
17 they raise their price under Medicaid.

18 Q. We'll look at your report in a second,
19 but I only recall there being, I think, four
20 Sandoz documents referenced in that report.

21 Do you remember any other Sandoz
22 documents that you found -- that you relied upon